

AUG 10, 2023 10:18 AM

Robin C. Bishop
Robin C. Bishop, Clerk of State Court
Cobb County, Georgia

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

GREGORY SMITHEY,

*

*

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v.

*

CIVIL ACTION FILE
NO. _____

HARBOR FREIGHT TOOLS USA, INC.
and JOHN DOES 1-5,

*

*

*

Defendants.

*

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff brings this lawsuit to recover for injuries he sustained after falling over a hidden hazard in a retail store.

PARTIES, JURISDICTION AND VENUE

1.

Plaintiff Gregory Smithey ("Plaintiff") resides in Georgia. By filing this lawsuit, Plaintiff submits to the jurisdiction of this Court and to venue in Cobb County.

2.

Defendant Harbor Freight Tools USA, Inc. ("Harbor Freight") is a foreign corporation that can be served through its registered agent - Corporate Creations Network Inc. - at 2985 Gordy Parkway, 1st Floor, Marietta, Cobb County, Georgia 30006.

3.

Defendants John Does 1-5 are presently unknown persons whose acts or omissions caused or contributed to cause Plaintiff's injuries and damages.

EXHIBIT A

4.

This Court has personal jurisdiction over Harbor Freight.

5.

This Court has jurisdiction over the subject matter of this case.

6.

Venue is proper in Cobb County.

FACTS

7.

Plaintiff reasserts the preceding paragraphs as if fully restated here.

8.

Harbor Freight is the owner and/or occupier of a discount tool store located at 401 South Columbia Avenue in Rincon, Georgia 31326 ("Rincon Harbor Freight").

9.

Plaintiff went to the Rincon Harbor Freight on August 30, 2021 to shop for a generator.

10.

As Plaintiff walked down an aisle in the Rincon Harbor Freight on August 30, 2021, Plaintiff fell and hit his head on the ground.

11.

While Plaintiff was on the ground, he saw a generator - which was obscured from Plaintiff's view while he was walking - that was sticking out from under a display table and into the aisle.

12.

Plaintiff suffered a severe laceration to his head and other injuries as a result of falling over a generator in the Rincon Harbor Freight on August 30, 2021.

COUNT ONE - NEGLIGENCE

13.

Plaintiff reasserts the preceding paragraphs as if fully restated here.

14.

Plaintiff was an invitee at the Rincon Harbor Freight on August 30, 2021.

15.

Harbor Freight owed a duty to Plaintiff to exercise ordinary care to keep its premises safe.

16.

Harbor Freight was negligent and failed to exercise ordinary care by not keeping the aisles at the Rincon Harbor Freight free of hazards.

17.

Harbor Freight was negligent and failed to exercise ordinary care by not having reasonable inspection procedures in place to ensure that the aisles at the Rincon Harbor Freight were free of hazards.

18.

Plaintiff suffered injuries and damages that were proximately caused by Harbor Freight's negligent act(s) and omission(s).

DAMAGES

19.

Plaintiff reasserts the preceding paragraphs as if fully restated here.

20.

The negligent acts and omissions by Harbor Freight proximately caused Plaintiff to incur special damages in the form of past medical bills in amounts that will be developed during discovery and proven at trial.

21.

The negligent acts and omissions by Harbor Freight proximately caused Plaintiff to suffer general damages in the form of pain and suffering, mental anguish, emotional distress, loss of the capacity for the enjoyment of life, diminished capacity to labor, the amounts of which are for the jury to determine.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a) that Summons issue and service be perfected requiring Harbor Freight to appear and answer this Complaint;
- b) that Plaintiff have a trial by a twelve-person jury;
- c) that a judgment be entered in favor of Plaintiff;
- d) that Plaintiff recover past and future special damages, including but not limited to medical bills, in amounts to be proven at trial;
- e) that Plaintiff recover past and future general damages in amounts to be decided at trial by the enlightened conscience of a fair and impartial jury;

- f) that all costs of this action are taxed against Defendant; and
- g) for such further relief as the Court deems fair and appropriate.

Respectfully submitted, this the 10th day of August, 2023.

ILARDI LAW, LLC

/s/ Frank A. Ilardi

Frank A. Ilardi
Georgia Bar No. 382028
Counsel for Plaintiff

1201 Peachtree Street, NE – Suite 2000
Atlanta, Georgia 30361
Phone / Fax: (470) 443-9060
Email: frank@ilawgeorgia.com

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

GREGORY SMITHEY,

Plaintiff,

v.

HARBOR FREIGHT TOOLS USA, INC.
and JOHN DOES 1-5,

Defendants.

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CIVIL ACTION FILE
NO. _____

**PLAINTIFF'S FIRST INTERROGATORIES, REQUEST FOR PRODUCTION
OF DOCUMENTS AND REQUEST FOR ADMISSIONS TO DEFENDANT
HARBOR FREIGHT TOOLS USA, INC.**

Plaintiff Gregory Smithey propounds the following Interrogatories, Request for Production of Documents and Request for Admissions to Defendant Harbor Freight Tools USA, Inc. pursuant to O.C.G.A. §§ 9-11-33, 9-11-34 and 9-11-36:

DEFINITIONS

“Plaintiff” refers to Plaintiff Gregory Smithey.

“Harbor Freight” refers to Defendant Harbor Freight Tools USA, Inc.

“You” or “your” refers to Harbor Freight.

“Rincon Harbor Freight” refers to store # 2965 located at 410 South Columbia Avenue in Rincon, Georgia 31326.

EXHIBIT A

INTERROGATORIES

Pursuant to O.C.G.A. § 9-11-33(b)(2), an interrogatory may ask a party to state “an opinion or contention that relates to fact or to the application of law to fact....” Please answer the following questions in full and under oath:

1.

What caused Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021?

2.

Please provide the names, addresses, phone numbers, and current employment status for everyone who worked at the Rincon Harbor Freight on August 30, 2021.

3.

Please provide the names, addresses, and telephone numbers for everyone who – to the best of your knowledge, information, or belief – witnessed Plaintiff fall at the Rincon Harbor Freight on August 30, 2021.

4.

Did anyone who worked at or for Harbor Freight talk to Plaintiff after he fell at the Rincon Harbor Freight on August 30, 2021? Please answer “yes” or “no.” If your answer is “yes,” then please provide the name, job title, and current employment status of each such person.

5.

Did anyone who works with or for Harbor Freight prepare an incident report regarding Plaintiff’s fall at the Rincon Harbor Freight on August 30, 2021? Please answer “yes” or “no.” If your answer is “yes,” then please provide the name, job title, and current

employment status of each person who authored or contributed to that report. If your answer is "no," then please explain why not.

6.

How often was the area where Plaintiff fell at the Rincon Harbor Freight on August 30, 2021 supposed to be inspected for potential hazards? Please identify all documents that support your response.

7.

How often was the area where Plaintiff fell at the Rincon Harbor Freight on August 30, 2021 actually inspected for potential hazards that day? Please identify all documents that support your response.

8.

When and by whom was the area where Plaintiff fell at Rincon Harbor Freight on August 30, 2021 last inspected for potential hazards prior to this incident? Please identify all documents that support your response.

9.

Were there security cameras in the area where Plaintiff fell at the Rincon Harbor Freight on August 30, 2021? Please answer "yes" or "no." If your answer is "yes," then please state whether the footage of Plaintiff falling was preserved.

10.

Have you been a plaintiff or a defendant in a lawsuit in Georgia the past 10 years? Please answer "yes" or "no." If your answer is "yes," then please provide a summary of the claims and identify the county where each lawsuit was filed.

11.

Please provide the names and addresses for all insurance companies that may be liable to satisfy part or all of a judgment which may be entered on Plaintiff's claims.

12.

Is there a self-insured retention or deductible on any of the insurance policies that may be liable to satisfy part or all of judgment which may be entered on Plaintiff's claims? Please answer "yes" or "no." If your answer is "yes," then please state the amount of each such self-insured retention or deductible.

13.

Please provide the factual basis for each affirmative defense raised in your Answer.

14.

For each expert who you expect to call at trial, please provide:

- (a) the name, address and occupation of the witness;
- (b) the subject matter on which the expert is expected to testify;
- (c) the substance of the facts and opinions to which the expert is expected to testify; and
- (d) a summary of the grounds for the expert's opinions.

DOCUMENT REQUESTS

Please produce the following materials:

1.

The full and complete insurance policy (not just the declarations page) from all primary or excess carriers that may be liable to satisfy part or all of a judgment which may be entered on Plaintiff's claims. *See O.C.G.A. § 9-11-26(b)(2)* (allowing for "discovery of the existence and contents" of insurance agreements).

2.

Unedited footage from all security / surveillance cameras at the Rincon Harbor Freight on August 30, 2021.

3.

Your incident report documenting when and how Plaintiff fell at the Rincon Harbor Freight on August 30, 2021.

4.

All photographs of Plaintiff that were taken at the Rincon Harbor Freight on August 30, 2021.

5.

All photographs of that were taken of the area where Plaintiff fell at the Rincon Harbor Freight on August 30, 2021.

6.

Your premises inspection procedures for Rincon Harbor Freight that were in effect in August 2021.

7.

The index to all policy and procedure manuals for Rincon Harbor Freight that were in effect in August 2021.

8.

All documents on which you relied for your responses to Plaintiff's First Interrogatories and all documents identified in such responses.

9.

All documents that support any affirmative defense raised in your Answer.

10.

All documents that form the basis for the opinions of each expert witness who you expect to call at trial.

11.

All documents you obtain from Plaintiff's healthcare providers (these can be produced at no cost by email to frank@ilawgeorgia.com).

12.

All documents that you intend to introduce into evidence at trial.

13.

Please produce a log identifying any documents you have declined to produce in response to these requests including the nature of the documents, the date of creation of such documents, the basis of any privilege asserted for not producing the documents, and any person(s) in possession of the documents.

REQUEST FOR ADMISSIONS

Pursuant to *G.H. Bass & Co. v. Fulton County Bd. of Tax Assessors*, 268 Ga. 327 (1997), requests for admissions may require the respondent to apply law to facts and then provide opinions or conclusions of law. Please admit or deny the following requests:

1.

You were properly served with a Summons and a copy of the Complaint.

2.

Your name as at it appears in the Complaint is correct.

3.

The State Court of Cobb County has subject matter jurisdiction in this case.

4.

The State Court of Cobb County has personal jurisdiction over you in this case.

5.

Venue is proper in Cobb County.

6.

Plaintiff was an invitee of Harbor Freight on August 30, 2021.

7.

Harbor Freight owed a duty to Plaintiff to exercise ordinary care to keep the premises at the Rincon Harbor Freight safe on August 30, 2021.

8.

Harbor Freight owed Plaintiff a duty to inspect the Rincon Harbor Freight for hazardous conditions on August 30, 2021.

9.

Harbor Freight admits liability in this case.

10.

Plaintiff is not at fault for falling at the Rincon Harbor Freight on August 30, 2021.

11.

No person who is not a party to this lawsuit caused Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021.

12.

No person who is not a party to this lawsuit contributed to cause Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021.

13.

No entity that is not a party to this lawsuit caused Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021.

14.

No entity that is not a party to this lawsuit contributed to cause Plaintiff to fall at the Rincon Harbor Freight on August 30, 2021.

15.

You have produced all non-privileged materials in your possession, custody, or control that are responsive to Plaintiff's document requests.

This the 10th day of August, 2023.

ILARDI LAW, LLC

/s/ Frank A. Ilardi

Frank A. Ilardi
Georgia Bar No. 382028
Counsel for Plaintiff

1201 Peachtree Street, NE – Suite 2000
Atlanta, Georgia 30361
Phone / Fax: (470) 443-9060
E-mail: frank@ilawgeorgia.com

IN THE STATE AND SUPERIOR COURTS
STATE OF GEORGIA

AUG 10, 2023 10:18 AM



Robin C. Bishop, Clerk of State Court
Cobb County, Georgia

NOTICE OF LEAVE OF ABSENCE

To: All Judges, Clerks of Court, and Counsel of Record

From: Frank A. Ilardi

Re: Notice of Leave of Absence

Date: August 10, 2023

Pursuant to Georgia Uniform Court Rule 16, Plaintiff's counsel Frank A. Ilardi respectfully notifies all judges before whom he has cases pending, all affected clerks of court, and all opposing counsel, that he will be on leave as follows:

1. The period of leave during which time Applicant will be away from the practice of law is: October 9, 2023 through and including October 25, 2023. The purpose of the leave is: family trip.
2. All affected judges and opposing counsel shall have ten days from the date of this Notice to object to it. If no objections are filed, the leave shall be granted.

This the 10th day of August, 2023.

ILARDI LAW, LLC

/s/ Frank A. Ilardi

Frank A. Ilardi
Georgia Bar No. 382028
Counsel for Plaintiff(s)

1201 Peachtree Street, NE - Suite 2000
Atlanta, Georgia 30361
Phone / Fax: 470-443-9060
Email: frank@ilawgeorgia.com

EXHIBIT A

CERTIFICATE OF SERVICE

Undersigned counsel certifies that the above **Notice of Leave of Absence** was electronically submitted today through Odyssey eFileGa, which will serve all affected clerks and opposing counsel.

This the 10th day of August, 2023

ILARDI LAW, LLC

/s/ Frank A. Ilardi

Frank A. Ilardi
Georgia Bar No. 382028
Counsel for Plaintiff(s)

1201 Peachtree Street, NE - Suite 2000
Atlanta, Georgia 30361
Phone / Fax: 470-443-9060
Email: frank@ilawgeorgia.com

AUG 10, 2023 10:18 AM

Robin C. Bishop

Robin C. Bishop, Clerk of State Court
Cobb County, Georgia

CIVIL ACTION NUMBER 23-A-3557

\$198.00 COST PAID

Smithey, Gregory

PLAINTIFF

VS.

Harbor Freight Tools USA, Inc.
Does 1-5, John

DEFENDANTS

SUMMONS

TO: HARBOR FREIGHT TOOLS USA, INC.

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

**FRANK A ILARDI
ILARDI LAW, LLC
1201 Peachtree Street, NE
Suite 2000
Atlanta, Georgia 30361**

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 14th day of August, 2023.

Clerk of State Court



Robin C. Bishop

Robin C. Bishop, Clerk of State Court
Cobb County, Georgia

AUG 10, 2023 10:18 AM

Robin C. Bishop

Robin C. Bishop, Clerk of State Court
Cobb County, Georgia

CIVIL ACTION NUMBER 23-A-3557

\$198.00 COST PAID

Smithey, Gregory

PLAINTIFF

VS.

Harbor Freight Tools USA, Inc.
Does 1-5, John

DEFENDANTS

SUMMONS

TO: DOES 1-5, JOHN

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

**FRANK A ILARDI
ILARDI LAW, LLC
1201 Peachtree Street, NE
Suite 2000
Atlanta, Georgia 30361**

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 14th day of August, 2023.

Clerk of State Court



Robin C. Bishop

Robin C. Bishop, Clerk of State Court
Cobb County, Georgia

General Civil and Domestic Relations Case Filing Information Form

 Superior or State Court of Cobb County**23-A-3557**

AUG 10, 2023 10:18 AM

For Clerk Use Only

Date Filed 08-10-2023Case Number 23-A-3557

MM-DD-YYYY



Robin C. Bishop, Clerk of State Court

Cobb County, Georgia

Plaintiff(s)

Smithey, Gregory

Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix

Defendant(s)

Harbor Freight Tools USA, Inc.

Last	First	Middle I.	Suffix	Prefix
Does 1-5, John				
Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix
Last	First	Middle I.	Suffix	Prefix

Plaintiff's Attorney ILARDI, FRANK ABar Number 382028Self-Represented

Check one case type and, if applicable, one sub-type in one box.

General Civil Cases

- Automobile Tort
- Civil Appeal
- Contract
- Contempt/Modification/Other
- Post-Judgment
- Garnishment
- General Tort
- Habeas Corpus
- Injunction/Mandamus/Other Writ
- Landlord/Tenant
- Medical Malpractice Tort
- Product Liability Tort
- Real Property
- Restraining Petition
- Other General Civil

Domestic Relations Cases

- Adoption
- Contempt
- Non-payment of child support, medical support, or alimony
- Dissolution/Divorce/Separate
- Maintenance/Alimony
- Family Violence Petition
- Modification
- Custody/Parenting Time/Visitation
- Paternity/Legitimation
- Support – IV-D
- Support – Private (non-IV-D)
- Other Domestic Relations

Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

Case Number

Case Number

I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

Is a foreign language or sign-language interpreter needed in this case? If so, provide the language(s) required.

Language(s) Required

Do you or your client need any disability accommodations? If so, please describe the accommodation request.

EXHIBIT A

Version 1.1.20



AUG 17, 2023 11:14 AM


Robin C. Bishop, Clerk of State Court
Cobb County, Georgia

GREGORY SMITHEY,

Plaintiff,

v.

HARBOR FREIGHT TOOLS USA, INC.
and JOHN DOES 1-5,

Defendants.

Civil Action No. 23-A-3557

AFFIDAVIT OF SERVICE UPON HARBOR FREIGHT TOOLS USA, INC.

Personally, appeared before the undersigned officer duly authorized by law to administer oaths, Christian Seklecki, who, after being duly sworn, deposes and states the following:

1.

Affiant states that he is over 18 years of age, a citizen of the United States, and not related to the parties herein. The statements are true and correct and based upon my personal knowledge. I am appointed to serve in the State Court of Cobb County.

2.

On August 16, 2023, at 1:49 p.m., I served HARBOR FREIGHT TOOLS USA, INC. by leaving a copy of a SUMMONS, COMPLAINT, PLAINTIFF'S FIRST INTERROGATORIES, REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST FOR ADMISSIONS TO DEFENDANT HARBOR FREIGHT TOOLS USA, INC. in the above-styled action, with AMMA MOORE, who is expressly authorized to accept service on behalf of CORPORATE

CREATIONS NETWORK, the Registered Agent of HARBOR FREIGHT TOOLS USA, INC, located and served at 2985 Gordy Parkway, First Floor, Marietta, Georgia 30066.

3.

ANNA MOORE is a Caucasian female, approximately 30-years-old, 5'7" and 160 lbs.

4.

I have served Anna Moore multiple times in the past. She accepted service from me as she usually does.



Affiant – Christian Seklecki
404-771-3204

Sworn to and subscribed to before me
This 17 day of August 2023


Notary Public

